

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

JAMIE M SYKES
Claimant

LEE COUNTY
Employer

APPEAL 16A-UI-04254-NM-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 03/06/16
Claimant: Appellant (1)

Iowa Code § 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

The claimant filed an appeal from the March 30, 2016, (reference 02) unemployment insurance decision that denied benefits based upon her discharge for violation of a known company rule. The parties were properly notified of the hearing. A telephone hearing was held on May 10, 2016 and was continued to May 13, 2016. The claimant, Jaime Sykes, participated and was represented by attorney, Curtis Dial. The employer, Lee County, participated through its attorney, Amy Reasner and Lee County Attorney Christine Spann. Witnesses Sandra Dobson and Rebecca Gaylord testified on behalf of the employer. Employer's Exhibits A through H were received into evidence.

ISSUE:

Was the claimant discharged for disqualifying job-related misconduct?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full time as a records clerk from June 2, 2011, until this employment ended on March 8, 2016, when she was discharged.

In early 2015, the employer began noticing issues with claimant's performance. Claimant was issued a written warning for her performance in February 2015. (Exhibit B). The warning advised claimant to be sure she was following all laws, regulations, policies, and procedures when issuing driver's licenses in order to avoid making errors. The warning also instructed claimant to take a refresher course on her duties by March 31, 2015, which she did.

In December 2015, the employer was notified by Iowa Department of Transportation Hearing Officer Sandra Dobson that claimant had made several errors considered to be compliance violations. At least some of the errors were significant enough that the Iowa Department of Transportation issued a warning to the county that they may have their licensing privileges revoked if the situation did not improve. Claimant denied making these errors and was unsure

why Dobson would report such. On January 6, 2016, claimant was issued a second written warning, was suspended for three days, and was placed on a performance improvement plan (PIP). (Exhibit C). The PIP instructed claimant to undergo additional training and to re-read her examiners manual within the next 30 days. The PIP advised claimant that if she did not show improvement in the next 60 days, her employment would be terminated.

During the time claimant was on the PIP all of her work was reviewed by driver's license deputy Rebecca Gaylord. While Gaylord was observing claimant, she would record any mistakes claimant made, inform claimant of what she did wrong, and fix the mistake. A vast majority of the errors claimant made were within the first two weeks of being placed on the PIP, however, claimant continued to make some mistakes into late February. For example on February 22 claimant failed to properly authentic documents, on February 19 claimant told a customer he needed to provide a certificate of naturalization when he held a U.S. passport, on February 19 claimant began to improperly issue or suspend a license before Gaylord stopped her and failed to ensure a customer was receiving the correct type of license, and on February 23 claimant gave an impermissible hint during a driving test and failed to keep track of the driver's errors. (Exhibit G). Dobson testified that several of these errors would have been compliance violations if not caught by Gaylord and that further compliance violations may have resulted in the county losing its ability to issue licenses. Claimant denied making any of the errors identified above and testified she believed Gaylord fabricated the reported errors because she did not like her. Claimant believed Gaylord did not like her because Gaylord had previously accused her of not doing her job.

On March 7, 2016, when the 60-day period of the PIP was up, Spann had a meeting with claimant to discuss her progress. Spann discussed claimant's progress and the errors Gaylord had recorded with her. Claimant denied making all the errors recorded by Gaylord. Spann informed claimant she needed the evening to think about how to proceed and told her they would talk again the next day. Spann determined that since claimant had not shown significant and sustained improvement and since any number of her errors could have led to the county losing the ability to issue licenses, that her employment should be terminated. Claimant was notified that she was being terminated on March 8, 2016. Though claimant disagreed with the allegations made against her, she did not dispute this or any other discipline she received through her union's grievance process.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to job-related misconduct.

Iowa Code § 96.5-2-a provides:

An individual shall be disqualified for benefits:

2. Discharge for misconduct. If the department finds that the individual has been discharged for misconduct in connection with the individual's employment:
 - a. The individual shall be disqualified for benefits until the individual has worked in and has been paid wages for insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

Iowa Admin. Code r. 871-24.32(1)a provides:

Discharge for misconduct.

(1) Definition.

a. "Misconduct" is defined as a deliberate act or omission by a worker which constitutes a material breach of the duties and obligations arising out of such worker's contract of employment. Misconduct as the term is used in the disqualification provision as being limited to conduct evincing such willful or wanton disregard of an employer's interest as is found in deliberate violation or disregard of standards of behavior which the employer has the right to expect of employees, or in carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design, or to show an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. On the other hand mere inefficiency, unsatisfactory conduct, failure in good performance as the result of inability or incapacity, inadvertencies or ordinary negligence in isolated instances, or good faith errors in judgment or discretion are not to be deemed misconduct within the meaning of the statute.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. *Huntoon v. Iowa Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

The employer has the burden of proof in establishing disqualifying job misconduct. *Cosper v. Iowa Dep't of Job Serv.*, 321 N.W.2d 6 (Iowa 1982). The issue is not whether the employer made a correct decision in separating claimant, but whether the claimant is entitled to unemployment insurance benefits. *Infante v. Iowa Dep't of Job Serv.*, 364 N.W.2d 262 (Iowa Ct. App. 1984). The Iowa Court of Appeals found substantial evidence of misconduct in testimony that the claimant worked slower than he was capable of working and would temporarily and briefly improve following oral reprimands. *Sellers v. Emp't Appeal Bd.*, 531 N.W.2d 645 (Iowa Ct. App. 1995). Generally, continued refusal to follow reasonable instructions constitutes misconduct. *Gilliam v. Atlantic Bottling Co.*, 453 N.W.2d 230 (Iowa Ct. App. 1990). Misconduct must be "substantial" to warrant a denial of job insurance benefits. *Newman v. Iowa Dep't of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984). Poor work performance is not misconduct in the absence of evidence of intent. *Miller v. Emp't Appeal Bd.*, 423 N.W.2d 211 (Iowa Ct. App. 1988).

The decision in this case rest, at least in part, on the credibility of the witnesses. It is the duty of the administrative law judge as the trier of fact in this case, to determine the credibility of witnesses, weigh the evidence and decide the facts in issue. *Arndt v. City of LeClaire*, 728 N.W.2d 389, 394-395 (Iowa 2007). The administrative law judge may believe all, part or none of any witness's testimony. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa App. 1996). In assessing the credibility of witnesses, the administrative law judge should consider the evidence using his or her own observations, common sense and experience. *Id.* In determining the facts, and deciding what testimony to believe, the fact finder may consider the following factors: whether the testimony is reasonable and consistent with other believable evidence; whether a witness has made inconsistent statements; the witness's appearance, conduct, age, intelligence, memory and knowledge of the facts; and the witness's interest in the trial, their motive, candor, bias and prejudice. *Id.*

The employer submitted documents regarding specific errors in claimant's performance. Gaylord's testimony was consistent with those exhibits. Claimant testified Gaylord fabricated mistakes because she did not like her. However, Dobson also testified that she had been aware of previous mistakes, which claimant also denied making. Claimant had no explanation as to why Dobson would offer such testimony if it were not true. After assessing the credibility of the witnesses who testified during the hearing, reviewing the exhibits submitted, considering the applicable factors listed above, and using her own common sense and experience, the administrative law judge finds the employer's version of events to be more credible than the claimant's recollection of those events.

The employer is entitled to establish reasonable work rules and expect employees to abide by them. The employer has presented substantial and credible evidence that claimant continued to commit serious errors in her work even after having been warned. Claimant received prior warnings about following proper procedures and protocols, was given additional remedial training, and was placed on a 60-day PIP prior to her termination. Despite these warnings and the additional training, claimant continued to fail in following the proper procedures of her position, which could have led to serious compliance violations. This is disqualifying misconduct.

DECISION:

The March 30, 2016, (reference 02) unemployment insurance decision is affirmed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

Nicole Merrill
Administrative Law Judge

Decision Dated and Mailed

nm/pjs